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DISPATCHED BY Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1 ✓
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 91-213
)	

**SECOND ORDER ON RECONSIDERATION AND
 MEMORANDUM OPINION AND ORDER**

Adopted: October 8, 1997

Released: October 9, 1997

By the Commission:

I. INTRODUCTION

1. On May 7, 1997, we adopted the *First Report and Order* for Access Charge Reform.¹ In response to petitions from various parties, we take this opportunity to revise or clarify certain of our actions. This Second Order on Reconsideration addresses certain issues raised in Petitions for Reconsideration that need consideration prior to the January 1, 1998 implementation of rules adopted in the *First Report and Order*. This Order also corrects certain errors made in the *First Report and Order*. Issues raised in the petitions for reconsideration that are not addressed here will be resolved in a future order on reconsideration.

¹ Access Charge Reform, *et. al.*, CC Docket No. 96-262, *et. al.*, First Report and Order, FCC 97-158, (rel. May 16, 1997) (*First Report and Order*); see also Access Charge Reform, *et. al.*, CC Docket No. 96-262, *et. al.*, Errata (rel. June 4, 1997) (*Access Charge Errata*); Access Charge Reform, *et. al.*, Order on Reconsideration, 12 FCC Rcd 10119 (1997) (*Access Charge Sua Sponte Reconsideration Order*).

II. SUMMARY

2. This Order first examines issues related to the presubscribed interexchange carrier charge (PICC) that the *First Report and Order* adopted. Sprint has petitioned for reconsideration of certain implementation issues that it states need to be addressed prior to January 1, 1998. In response to Sprint's petition, we implement the following changes in this Order: (1) incumbent LECs must inform interexchange carriers (IXCs), on a customer-by-customer basis, how many PICCs, and what kind of PICCs, are being assessed on each of their presubscribed customers; and (2) the PICC should be levied on the interstate interLATA presubscribed interexchange carrier (PIC) where a LATA encompasses territory in more than one state.

3. In response to Sprint's Petition, we also clarify that PICCs are calculated by dividing projected common line revenues permitted under our rules, not base period common line revenues, by projected loops. In addition, we grant Petitions by USTA, ICA, and the County of Los Angeles that Centrex lines be assessed PICCs using a line-to-trunk equivalency ratio. Further, we clarify that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities.

4. NECA has asked for the Commission to set the NECA carrier common line (CCL) rates at levels that will recover the difference between common line revenue requirements and revenues recovered through subscriber line charges (SLCs), special access surcharges, and universal service payments equivalent to current long term support (LTS) payments. We grant a waiver that will permit NECA to calculate the CCL rate in the manner it has requested. We also clarify which of the rules adopted in the *First Report and Order* apply to rate of return LECs. Lastly, we amend our rules to correct clerical errors made in the *First Report and Order*.

III. Presubscribed Interexchange Carrier Charge

A. Implementation Issues

1. Background

5. In the *First Report and Order*, we adopted common line rate structure modifications that will permit price cap LECs to shift gradually from a cost-recovery mechanism that recovers a significant portion of non-traffic sensitive common line costs through per-minute CCL charges to one that recovers these costs through flat-rated charges. The cost-recovery mechanism we adopted retains the current \$3.50 ceiling on the SLC for primary residential and single-line business lines and increases the SLC ceilings on other lines

to permit LECs to recover a greater amount of the common line costs through flat-rated charges assessed on the end user. To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, LECs will recover the shortfall, subject to a maximum charge, through a presubscribed interexchange carrier charge (PICC), a flat, per-line charge assessed on the end-user's presubscribed interexchange carrier.

6. The PICC, which over time will shift revenue recovery from the per-minute CCL charges to a flat-rated charge assessed on IXCs, was designed to allow price cap LECs to recover the difference between revenues collected through the SLCs and the total revenue permitted for the common line basket. In order to provide price cap LECs and IXCs with adequate time to adjust to the new rate structure, we adopted an approach that will gradually phase in the PICC over time. Specifically, effective January 1, 1998, we capped PICCs for primary residential and single-line business lines at \$0.53 per month for the first year.² Beginning January 1, 1999, the ceiling on the monthly PICC on primary residential and single-line business lines will be adjusted for inflation and will increase by \$0.50 per year until it equals the monthly per-line common line revenues and residual interconnection charge revenues permitted under our price cap rules, less the maximum SLC charge allowed under our rules.³

7. In addition, to the extent that the SLC ceilings on all lines and the PICC ceilings on primary residential and single-line business lines prevent recovery of the full common line revenues permitted by our price cap rules, the new rate structure we adopted for price cap LECs permits these carriers to recover the shortfall through PICCs assessed on non-primary residential and multi-line business lines.⁴ For the first year, the ceiling on the PICC will be \$1.50 per month for non-primary residential lines and \$2.75 per month for multi-line business lines.⁵

8. Beginning January 1, 1999, the PICC ceilings for price cap non-primary residential and multi-line business lines will be adjusted for inflation and will increase by a maximum of \$1.00 and \$1.50 per year, respectively, until incumbent LECs can recover all of their permitted common line revenues through a combination of flat-rated SLCs and PICCs.⁶ As the PICC ceilings on primary residential and single-line business lines increase, the residual per-minute CCL charge will decrease until it is eliminated. After the residual per-minute

² *First Report and Order* at ¶ 94.

³ *See* 47 C.F.R. § 69.153(c)(1).

⁴ *First Report and Order* at ¶ 99.

⁵ *Id.*

⁶ *Id.* at ¶ 101.

CCL charge is eliminated and the PICC ceilings for primary residential and single-line business lines increase, price cap LECs will reduce their PICCs on non-primary residential and multi-line business lines by a corresponding amount.⁷ Reductions will be targeted first to the PICCs on multi-line business lines until the PICCs for those lines are equal to the PICCs for non-primary residential lines. Thereafter, price cap LECs will apply the annual reductions to both classes of customers equally until the combined SLCs and PICCs for primary residential and single-line business lines recover the full average per-line common line revenues permitted under our price cap rules, and the additional PICCs on non-primary residential and multi-line business lines no longer recover common line revenues.⁸

2. Sprint's Petition for Reconsideration

9. On July 11, 1997 Sprint filed a Petition for Expedited Reconsideration and Clarification in which it requests that the Commission reconsider certain implementation issues related to the PICCs adopted in the *First Report and Order*. Sprint argues that these issues need to be resolved prior to January 1, 1998, the effective date of the PICCs. Specifically, Sprint requests that the Commission require LECs to provide IXCs with customer-specific billing information that specifies the number and type(s) of PICCs LECs will be assessing for each of the IXCs' presubscribed customers.⁹ Sprint asserts that because LECs will be assessing IXCs different PICCs for primary and non-primary residential lines, IXCs may choose to develop different residential rates for these lines. Sprint argues that IXCs will therefore need the customer-specific PICC information in order to develop separate toll rates for calls originated on these lines.

10. In addition, Sprint contends that in a typical multi-line business configuration IXCs are unable to determine how many multi-line business lines are presubscribed to them.¹⁰ For example, Sprint states that typically a multi-line business customer may use a special access facility, connecting its PBX with the IXC's point of presence (POP), to handle all of its outgoing long distance calls. In addition, the customer may subscribe to local lines that connect the PBX to the LEC end office. Although these local lines carry no outgoing long distance traffic, they may be presubscribed to a particular IXC and will be assessed PICCs. According to Sprint, unless the LECs provide customer-specific PICC information, IXCs are unable to know how many of these local lines exist or how many PICCs are being assessed for these lines. Sprint is concerned that some IXCs may try to persuade their high-volume

⁷ *Id.* at ¶ 102.

⁸ *Id.*

⁹ Sprint Petition for Reconsideration at 3.

¹⁰ *Id.*

customers to presubscribe their local business lines that are not used for long distance traffic to another IXC so as to shift the PICC costs to their competitors.¹¹ Sprint argues that in order to respond adequately to such practices, IXCs need access to customer-by-customer PICC data so that they have the ability to pass through the PICCs directly to their customers if they so choose.¹²

11. In its petition, Sprint seeks guidance from the Commission on how LECs should assess PICCs where a LATA encompasses territory in more than one state, and a customer has one IXC handling intraLATA interstate calls and another IXC handling interLATA interstate calls.¹³ Sprint suggests that the PICC should be assessed on the interLATA interstate carrier.¹⁴

3. Comments

12. MCI and CompTel agree with Sprint that LECs should be required to provide information to IXCs about PICCs for each presubscribed customer.¹⁵ CompTel argues that without this information, IXCs will not be able to verify the access bills they receive from LECs and will not be able to determine accurately the amount that will be passed through to their customers.¹⁶

13. USTA opposes the proposal to require LECs to provide customer-specific PICC data, arguing that it is unduly burdensome and unnecessary.¹⁷ Bell Atlantic argues that there is already a process in place that allows LECs to provide the necessary information to resolve billing inquiries and that any disputes that arise can be resolved, if necessary, through the Commission's complaint process.¹⁸ Bell Atlantic agrees with Sprint that the PICC should be assessed on the line presubscribed to the interLATA interstate carrier.¹⁹

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ MCI Comments at 7; CompTel Comments at 16.

¹⁶ *Id.*

¹⁷ USTA Comments at 4.

¹⁸ Bell Atlantic Comments at 19 n.55.

¹⁹ Bell Atlantic Comments at 18 n.52.

4. Replies

14. GTE opposes any proposal that LECs provide customer-by-customer PICC data. GTE states that IXC's can obtain this information from its own customers and that when discrepancies arise, IXC's can resolve problems through normal billing reconciliation processes.²⁰

15. Sprint argues that the fact that USTA opposes a request for PICC information supports Sprint's position that the Commission needs to issue a directive to avoid lengthy and burdensome disputes between hundreds of IXC's and LEC's.²¹

5. Discussion

16. We grant Sprint's request that LECs be required to provide IXC's with customer-specific information about the number and type(s) of PICCs they are assessing for each of the IXC's presubscribed customers. We agree with Sprint that this measure is necessary to provide IXC's the opportunity to develop a rate structure that recovers these costs in a cost-causative manner.²² One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. If an IXC were to receive a bill for the aggregate amount of the PICCs assessed on its presubscribed lines and did not have access to information that indicates for which lines the LEC is assessing a primary or non-primary residential PICC, the IXC would be unable to develop residential rates that accurately reflect the underlying costs of providing service over those lines. Similarly, in a multi-line business configuration, without information about the number of local business lines that are presubscribed to a particular IXC and the amount of PICCs being charged for which lines, the IXC will not be able to recover the costs of serving its customers in an efficient manner. We therefore conclude that LECs must provide IXC's with information about how many and what type of PICCs they are charging IXC's for each customer.

17. We conclude that there is insufficient evidence in the record to support arguments that providing customer-specific PICC data to IXC's will be overly burdensome and that discrepancies can be resolved through normal billing reconciliation processes. In order to bill IXC's the proper amount, LECs will presumably have to create a database for purposes of determining how many lines are presubscribed to each IXC and what type of PICC is being

²⁰ GTE Reply at 8.

²¹ Sprint Reply at 3.

²² Sprint Reply at 2.

assessed for each of those lines. We conclude that LECs must provide this information to the IXC's to enable them to develop rate structures that will recover these costs efficiently.

18. We also grant Sprint's request to clarify how LECs assess PICCs in situations where a customer for a particular line has one presubscribed carrier for interstate intraLATA calls and another for interstate interLATA calls. Dividing the PICC between two IXC's based on actual calling patterns would create an unnecessary administrative burden that would outweigh any minimal benefit. Moreover, LATA boundaries that cross state lines are the exception rather than the rule, and interstate calls within a LATA thus represent only a small portion of interstate traffic. We therefore conclude that in such cases, the PICC shall be assessed on the interstate interLATA carrier.

B. PICC Calculation

1. Background

19. In its petition for reconsideration, Sprint argues that the Commission's formula for calculating PICCs will not allow sufficient recovery of loop costs, because the formula relies on base period revenues divided by the projected number of loops in use for such annual period.²³ Sprint contends that such a formula would force PICCs downward because revenues determined on a base period would not adequately reflect revenue growth commensurate with projected growth in loops.²⁴ In turn, Sprint argues, under-recovery of loop costs through flat-rated PICCs will necessitate greater reliance on usage charges to recover non-traffic-sensitive costs, undermining the Commission's efforts to align access charges with the manner in which costs are incurred.²⁵ Bell Atlantic, GTE and USTA indicate a similar concern in their comments.²⁶ U S West indicates that it would have the same concern if it shared Sprint's interpretation of the PICC rule. U S West, however, does not interpret the rule as requiring the use of base period revenues and projected loops.²⁷

2. Discussion

20. We clarify in this Order that the rule describing the formula for calculating PICCs relies on projected revenues and projected loop counts. The use of projected revenues and

²³ Sprint Petition at 6.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Bell Atlantic Comments at 23; GTE Comments at 7; USTA Comments at 4-5.

²⁷ U S West Comments at 13.

projected loop counts is applicable to PICC calculations conducted under sections 69.153(c) and 69.153(d) of our rules. We note that the rule setting forth the method of calculating SLCs expressly incorporates projected revenues and projected loop numbers.²⁸ Although the PICC rule does not expressly state that projected revenues are to be used in the formula, the rule has been designed to use projected revenues rather than revenues derived from a base period.²⁹ Accordingly, there is no "mismatch" caused by dividing projected loops by base period revenues. We will, however, amend our rules to state explicitly that the projected revenues must be used to conduct the PICC calculation.

21. In our *First Report and Order*, we adopted section 69.153(c)(1) in which we directed incumbent LECs to calculate the maximum monthly PICC for primary residential subscriber lines and single-line business lines by using "one twelfth of the sum of annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus \$3.50." On further consideration of section 69.153(c)(1), we recognize that, as written, this rule may not permit an incumbent LEC to recover its residual interconnection charge revenues from primary residential and single-line business lines when its maximum primary residential and single-line business SLC is less than \$3.50. On our own motion, therefore, we take this opportunity to reconsider this issue and revise section 69.153(c)(1). We replace the phrase "minus \$3.50" with the phrase "minus the maximum subscriber line charge computed pursuant to section 69.152(d)(2)."

22. In the *First Report and Order*, we also adopted section 69.153(d)(2)(i), which instructs incumbent LECs how to calculate the maximum monthly PICC for multi-line business lines when the maximum charge for the non-primary residential PICC is at its cap. The rule was intended to provide that the calculation be performed by taking "[o]ne twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted," less the maximum amounts permitted to be recovered through the SLC, the other PICCs, and other marketing expense recovery mechanisms. In crafting the language of the rule, however, we identified the maximum amount permitted to be recovered from the non-primary residential PICC as section 69.153(d)(1)(i) instead of section 69.153(d)(1). We correct this error to take into account the fact that the cap on the non-primary residential PICC limits the amount that charge can recover.

²⁸ 47 C.F.R. § 69.152(b).

²⁹ 47 C.F.R. § 69.153(c)(1) describes the monthly PICC for primary residential subscriber lines and single line business subscriber lines as the lower of: "(1) One twelfth of the sum of annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus \$3.50; or (2) \$0.53"

C. Application of PICCs to Centrex Lines

1. Background

23. The *First Report and Order* requires that the PICC recover common line revenues not recovered from the SLC and other common line charges, and that the PICC be applied on the same basis as the SLC. Centrex arrangements are charged more SLCs than are similarly-sized PBX arrangements.³⁰ Consequently, the *First Report and Order* requires that Centrex arrangements be assessed a greater number of PICCs than are similarly-sized PBX arrangements.

2. Petitions

24. USTA, ICA, and the County of Los Angeles (Los Angeles) assert that the number of PICCs that are assessed on Centrex arrangements should equal the number of PICCs assessed on similarly-sized PBX arrangements.³¹ They contend that the revenues recovered from Centrex arrangements by the PICC are unrelated to the costs of providing Centrex service.³² They argue that Centrex customers currently pay one SLC per line, which recovers the full interstate portion of common line costs used to provide Centrex service.³³ They further contend that the disproportionate level of PICC Centrex charges unfairly subjects Centrex systems to anticompetitive and arbitrary charges, which is contrary to the clear intent of Congress that subsidies be explicit and cost-based.³⁴ They observe that while a Centrex customer with 70 lines is equivalent to a PBX customer with 13 trunks and to a single digital PBX service,³⁵ the IXC serving the Centrex customer would be assessed \$192.50 per month, while the IXC serving the PBX customer would only be assessed \$35.75 per month and the IXC serving the digital PBX customer would be assessed \$13.75 per month.³⁶ ICA claims that a 2,500-line Centrex system is equivalent to a 150-trunk PBX system.³⁷ Los Angeles

³⁰ MTS and WATS Market Structure, Memorandum Opinion and Order, 97 F.C.C.2d 682, 698-701 (1983) (*MTS and WATS Market Structure Order*).

³¹ USTA Petition at 2-4; ICA Petition at 2-5; Los Angeles Petition at 1-11.

³² USTA Petition at 2; ICA Petition at 3.

³³ USTA Petition at 3; Los Angeles Petition at 8.

³⁴ ICA Petition at 3; USTA Petition at 3.

³⁵ Digital PBX service uses an ISDN line as the PBX trunk.

³⁶ USTA Petition at 3; ICA Petition at 4; Los Angeles Petition at 6.

³⁷ ICA Petition at 4.

notes that the annual interstate billing levels for its 86,000 access lines could increase as much as \$4.6 million, including \$2.8 million in PICCs, as the result of the rules adopted in the *First Report and Order*, even though Los Angeles currently pays only about \$1 million in annual interstate billing.³⁸

25. ICA notes that most heavy users of Centrex services are under long-term contracts with their Centrex service provider, thereby preventing them from switching to a PBX system to avoid the additional PICCs. Even where the contract has expired, ICA contends that it can take up to several years to put a major Centrex system up for bid and fully transition to a PBX.³⁹ Los Angeles asserts that with respect to long distance service, local governments will be treated as pariahs by IXCs.⁴⁰

26. ICA observes that the Commission's rules appear to apply to lines that are toll restricted, thereby penalizing customers that attempt to control costs and reduce the possibility of toll fraud. According to ICA, many Centrex customers require that a portion of their Centrex lines be toll restricted. ICA argues that toll-restricted Centrex lines should not be subject to any PICCs.⁴¹

27. Petitioners propose that LECs be permitted to reflect trunk equivalency. They propose that the PICC on Centrex lines be assessed using a line-to-trunk equivalency ratio.⁴² Such ratios are already set forth in intrastate tariffs.⁴³ In the absence of an intrastate tariff, the LECs could develop such a ratio,⁴⁴ or there could be agreed upon industry relationships between the Centrex lines and trunks.⁴⁵ USTA also suggests that LECs should be permitted to count Network Access Registers (NARs) for purposes of assessing the PICC on Centrex customers.⁴⁶ USTA contends that NARs are equivalent to PBX trunks since one NAR

³⁸ Los Angeles Petition at 2. 67,000 of the County's 86,000 access lines are Centrex. Los Angeles Petition at 4.

³⁹ ICA Petition at 2.

⁴⁰ Los Angeles Petition at 6.

⁴¹ ICA Petition at 3-4.

⁴² USTA Petition at 3-4; ICA Petition at 4-5; Los Angeles Petition at 10.

⁴³ ICA Petition at 5; USTA Petition at 4.

⁴⁴ USTA Petition at 4.

⁴⁵ ICA Petition at 5.

⁴⁶ USTA Petition at 4.

provides one link to the switch.⁴⁷ In an *ex parte* filing, USTA has indicated that in order to address the complexity and verification problems of using individual state tariffs or individual company ratios, the Commission should adopt a uniform line-to-trunk equivalency ratio of 9 to 1.⁴⁸

3. Comments

28. Most commenting parties support petitioners.⁴⁹ New York City notes that its mayoral agencies alone comprise approximately 73,100 Centrex lines and non-mayoral agencies use at least an additional 1,776 Centrex lines.⁵⁰ New York City estimates that it could save over 2 million dollars annually if the Commission adopted a line-to-trunk equivalency ratio of at least 8 to 1.⁵¹ Similarly, Boston University argues that without trunk-to-line equivalency, it potentially will have to pay at least an additional \$600,000 to cover the new PICCs.⁵² Boston University suggests that the Commission should at least permit a limited form of grandfathering for Centrex customers who are locked into bona fide long-term contract tariffs.⁵³

29. AT&T, Teleport, and Time Warner oppose the petitions.⁵⁴ AT&T argues that because Centrex uses more of the LEC's lines than a PBX arrangement does, the disparity between Centrex and PBX arrangements is consistent with the principles of cost-causation.⁵⁵ AT&T also argues that given that LECs have historically offset the SLC in the intrastate

⁴⁷ USTA Petition at 4.

⁴⁸ Letter from Frank McKennedy, Director, Legal and Regulatory Affairs, United States Telephone Association, to William F. Caton, Acting Secretary, Federal Communications Commission, Sept. 25, 1997 (*USTA September 25 Letter*) at 2.

⁴⁹ See U S West Comments at 4; SNET Comments at 2; Bell Atlantic Comments at 14-16; Ad Hoc Comments at 9-11; Ameritech Comments at 2; GTE Comments at 19-20; API Comments at 9-10; National Centrex Users Group Comments at 1-3; City of New York Department of Information Technology and Telecommunications (New York City) Comments at 5-7. We grant New York City's Motion to File Late Comments.

⁵⁰ New York City Comments at 5-6.

⁵¹ New York City Comments at 6.

⁵² Boston University Comments at 3.

⁵³ Boston University Comments at 4.

⁵⁴ AT&T Comments at 12-13; Teleport Comments at 1-3; Time Warner Comments at 7-9.

⁵⁵ AT&T Comments at 13.

jurisdiction by providing "credits" on customers' Centrex bills, there is no reason to think that they could not provide similar credits to offset the new multi-line business PICC.⁵⁶ Teleport notes that even though Centrex users pay more in SLCs than do users of PBX, Centrex has remained marketable, and the new PICCs are less burdensome than are the SLCs.⁵⁷ Moreover, although the Commission temporarily assessed a lower SLC on Centrex lines when the SLC was first implemented to reduce the possibility that users would move to PBX service before state commissions had an opportunity to adjust intrastate rate structures, Centrex is presently largely deregulated in the intrastate jurisdiction, so that there is no need to create a transition plan.⁵⁸

30. Time Warner contends that the PICCs on Centrex lines perform the same function as other multi-line PICCs, *i.e.*, to recover common line and other revenue shortfalls. Granting the petitions would threaten to undermine the scheme for recovering costs not otherwise recovered from common line charges.⁵⁹ Time Warner argues that the *First Report and Order* announced that multi-line business customers would have to shoulder a disproportionate share of costs during a transition period, and the fact that some customers temporarily shoulder a greater proportion of the burden than others is "a readily accepted, and necessary, aspect of reform."⁶⁰ Time Warner also claims that the application of the multi-line PICC to Centrex access lines is consistent with the Commission's treatment of integrated services digital network (ISDN) lines. In the *First Report and Order*, the Commission determined that Primary Rate Interface (PRI) ISDN service should be subject to a SLC rate equal to five times the incumbent LEC's average per-line common line costs, and that Basic Rate Interface (BRI) ISDN service should be subject to a SLC based on the incumbent LEC's average per-line costs. The Commission maintained that five-to-one ratio in its application of the PICC to ISDN services.⁶¹

4. Discussion

31. We grant the petitions of USTA, ICA, and Los Angeles that the PICC be assessed on Centrex lines using a line-to-trunk equivalency ratio. For the reasons discussed below, we adopt USTA's proposal to use a uniform 9:1 ratio. In large part, the multi-line business PICC

⁵⁶ AT&T Comments at 13.

⁵⁷ Teleport Comments at 3.

⁵⁸ Teleport Comments at 3.

⁵⁹ Time Warner Comments at 7.

⁶⁰ Time Warner Comments at 8.

⁶¹ Time Warner Comments at 8-9.

is not a cost-based charge, but a contribution, "for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers."⁶² It is therefore reasonable to consider non-cost factors in determining how to assess the PICC. We conclude that with respect to the PICC, Centrex customers should be treated similarly to PBX customers, because the two arrangements are functionally equivalent.

32. A business customer with a large number of lines often chooses to connect its users with each other and with other telephone customers in one of two ways: Centrex or PBX. While a Centrex customer receives service from the central office switches of the LEC, a PBX arrangement is not directly supported by the central office switch, but is connected to the central office switch via trunks.⁶³ Even though calls made to other customers must travel to the LEC's central office under either approach, the Centrex arrangement requires that internal calls also travel to and from the central office. Centrex service usually requires a loop facility from the central office to the customer's location for each working Centrex telephone number. The PBX arrangement enables the PBX customer to concentrate usage from multiple lines to a few trunks. Also, while a Centrex customer does not purchase the Centrex equipment and does not house it, PBX arrangements require the customer to obtain and provide space for PBX switches at the customer's premises.

33. Petitioners state that Centrex and PBX arrangements are functionally equivalent, and opposing parties do not dispute this assertion. We do not wish to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.*, non-cost-related charges, for Centrex service, the PBX service becomes cheaper.

34. In addition, many Centrex users are government, education, and health care facilities.⁶⁴ We note that more than 25 percent (18,640) of Los Angeles's 67,000 Centrex lines, which do not include Los Angeles County public schools are used by health care facilities. Without using a line-to-trunk equivalency ratio, Los Angeles could be required to pay an additional \$2.8 million annually in PICCs, if its presubscribed IXC passes these

⁶² *First Report and Order* at ¶ 101.

⁶³ A PBX trunk is the circuit, equivalent to a local loop, which connects the PBX with the LEC's central office.

⁶⁴ Los Angeles Petition at 6; New York City Comments at 6; National Centrex Users Group Comments at 2; Boston University Comments at 1; Letter from Anthony Alessi, Director, Federal Relations, Ameritech, to William Caton, Acting Secretary, Federal Communications Commission, Sept. 17, 1997 (*Ameritech September 17 Letter*) at 3.

charges through.⁶⁵ New York could see the implementation of the PICC increase its rates by over \$2.4 million annually, if these charges are passed through by its IXC. Boston University, with its 10,000 Centrex lines, faces a potential increase of \$330,000 per year in PICCs. By granting the petitions for relief, we ensure that all multi-line business customers shoulder a similar portion of the PICC contribution, irrespective of whether they use Centrex or PBX arrangements.

35. Centrex arrangements are charged SLCs on a per-line basis, even though this difference results in a higher rate than equivalent PBX arrangements have to pay. That differential is due to the additional common line costs that Centrex lines incur. Historically, the Commission has declined to apply a trunk equivalency ratio for Centrex services, under the rationale that "[i]f Centrex uses more lines, then Centrex necessarily creates more line costs."⁶⁶ Unlike the SLC, in most instances, the multi-line business PICC will not recover loop costs of multi-line businesses.⁶⁷ Instead, it will contribute to the recovery of the cost of single-line business and residential loops, which have lower SLC and PICC caps. Centrex and PBX are functionally equivalent in most respects. Taking these factors into consideration, it would be inequitable to require Centrex users to cause its presubscribed IXC to bear a significantly larger PICC contribution than do similarly-sized PBX users.

36. Therefore, we will limit the PICC charges that may be assessed on IXCs serving Centrex customers on a line-to-trunk equivalency basis, except where the multi-line business SLC ceiling does not permit the recovery of all interstate-allocated loop costs from the end user. In those instances, a somewhat greater PICC -- one that includes the difference between the per-line loop cost and the multi-line business SLC cap -- will be assessed on Centrex lines. Thus, for example, if on January 1, 1998, in a particular region the loop cost is \$9.40, and the maximum permitted multi-line business PICC is being assessed, *i.e.*, \$2.75, each Centrex line would be assessed a \$0.71 PICC, which is equal to one-ninth of \$2.75 plus the difference between the \$9.40 loop cost and the \$9.00 SLC.

37. In determining the appropriate line-to-trunk equivalency ratio, we consider several factors. First, we observe that many states, but not all, already have trunk equivalency tables for their intrastate tariffs. USTA has indicated that although these tables are similar, they are

⁶⁵ This figure is based on a \$2.75 PICC being assessed. SBC projects a lower PICC in California. See Letter from Jay Bennett, Director, Federal Regulatory, SBC Communications, Inc., to William Caton, Acting Secretary, Federal Communications Commission, Aug. 12, 1997.

⁶⁶ *MTS and WATS Market Structure Order*, 97 F.C.C.2d at 700.

⁶⁷ *First Report and Order* at ¶ 39 (noting that the \$9.00 SLC will permit incumbent price cap LECs to recover their average common line revenues from 99 percent of their non-primary residential and multi-line business lines).

not identical.⁶⁸ For example, USTA states that a Centrex customer with 70 lines is equivalent to a PBX customer with 13 trunks,⁶⁹ while Ameritech states that in Illinois, the equivalency tariff for 70 Centrex lines is 8 PBX trunks.⁷⁰ Adopting the trunk equivalency ratios set out in intrastate tariffs would result in different equivalency ratios being used in different states and would not provide a trunk equivalency ratio for many states. Because the trunk equivalency ratio we adopt today is for an interstate charge, a national standard for trunk equivalency ratio is appropriate.

38. We also desire administrative ease in calculating trunk equivalency. Adoption of a single ratio would simplify the assessment of PICCs on Centrex lines by eliminating the use of multiple ratios from multiple tables or state tariffs. IXC's would have the benefit of knowing that they will be assessed a set fraction of the PICC for each Centrex line that is presubscribed to their service, even when Centrex customers have lines presubscribed to different IXC's. Therefore, we have elected to adopt a single trunk equivalency ratio for establishing PICC charges for all Centrex lines. USTA suggested a ratio of nine (9) Centrex lines to one (1) PBX trunk. It bases its recommendation on the average of the weighted average trunk equivalency ratios or relationship between NARs and Centrex lines that are employed in several jurisdictions.⁷¹ Applying a 9:1 ratio would result in a maximum PICC on Centrex lines of approximately \$0.30 per line in 1998 for the overwhelming majority of Centrex lines. We note that the ratio under some state tariffs can approach 18 to 1 for certain Centrex customers.⁷² Reducing the PICC from up to \$2.75 to less than \$0.31 achieves the goal of spreading the PICC contribution more equitably among multi-line business customers. Using a more complicated approach to establish equivalency may only add a marginal benefit, increasing or reducing PICCs by less than \$0.16, and does not outweigh the additional administrative costs. We adopt the 9:1 ratio proposed by USTA, finding it to be reasonable and administratively simple.

39. Time Warner is correct in observing that our treatment of Centrex arrangements differs from how we addressed ISDN service in the *First Report and Order*. There, we set the SLC for PRI ISDN to be up to five times the amount assessed multi-line business subscribers, because that figure reflects the ratio of non-traffic sensitive loop costs associated with PRI ISDN service to non-traffic sensitive costs associated with other multi-line business

⁶⁸ USTA September 25 Letter at 2.

⁶⁹ USTA Petition at 3. See also USTA September 25 Letter at 8.

⁷⁰ Ameritech September 17 Letter at 4.

⁷¹ USTA September 25 Letter at 2.

⁷² Ameritech September 17 Letter at 3.

loops.⁷³ We also elected to permit incumbent LECs to assess up to five PICCs on PRI ISDN service because "prohibiting incumbent LECs from charging as many as five PICCs for PRI ISDN service could prevent them from recovering the common line costs associated with providing PRI ISDN service in cases where the common line costs exceed the SLC ceiling."⁷⁴

40. In both our treatment of ISDN lines and Centrex lines, our goal is to establish an equitable sharing of the multi-line business PICC. Prior to the adoption of the *First Report and Order*, we had no rules relating to the PICC. We had no evidence to the contrary that the assessment of five PICCs for PRI ISDN was inappropriate, so we elected to be consistent as between SLC and PICC assessment. Previously, however, ISDN lines could be charged up to 24 SLCs.⁷⁵ The adjustment from 24 SLCs to five SLCs and five PICCs does not create undue hardship on ISDN subscribers, and the *First Report and Order* should reduce their overall rates.

41. Time Warner also argues that imposing the PICC on Centrex on a per-line basis is part of the Commission's access charge transition to a more cost-causative rate structure. Although the multi-line PICC is part of our transition, this alone does not justify requiring Centrex customers to make a greater contribution toward recovery of the loop cost of residential customers than do PBX customers. Teleport's assertion that petitioners are exaggerating the impact of the PICC on Centrex users, because the amount of the charge is substantially less than the SLC, ignores the fact that the SLC recovers the additional costs imposed by Centrex customers, while the PICC does not.

42. We deny ICA's petition that we not assess PICCs on toll-restricted Centrex lines. Although the PICC is assessed upon IXCs for all lines that are presubscribed to an IXC, the PICC is not a charge based on toll usage or on the ability to place toll calls. The Commission anticipated that some lines might not be used for long distance when it adopted a rule allowing PICCs to be assessed directly upon end users for any line not presubscribed to an IXC.⁷⁶ The fact that toll-restricted Centrex lines incur no long-distance charges is,

⁷³ *First Report and Order* at ¶ 116.

⁷⁴ *First Report and Order* at ¶ 118.

⁷⁵ *First Report and Order* at ¶¶ 111-12.

⁷⁶ See *First Report and Order* at ¶ 92.

therefore, irrelevant.⁷⁷ Also, costs for these lines are assigned to the interstate jurisdiction by separations, regardless of whether the lines are toll-restricted.

IV. TRANSPORT

A. TIC Exemption

1. Background

43. The Commission created the TIC originally as a residual charge to ensure that its adoption of the 1992 interim transport rate structure was revenue-neutral for the incumbent LECs. As such, the Commission required that the TIC be assessed on a per-minute basis on all interstate access customers that interconnect with the LEC switched access network.⁷⁸ A portion of the TIC represented the 80 percent of the costs of the tandem switch remaining after the Commission set the tandem-switching rate to recover only 20 percent of the tandem-switching revenue requirement. The rest of the revenues collected from the TIC represented costs previously recovered through transport charges that could not, at that time, be associated definitively with specific facilities or services related to transport. The Commission stated in the *First Transport Order* that, in addition to tandem-switching costs, the TIC likely recovered: (a) costs more appropriately recovered through other rate elements; (b) costs that more properly belong in the intrastate jurisdiction, but that the Part 36 jurisdictional separations rules allocate to the interstate jurisdiction; (c) costs of facilities that were then in place, but not needed for transport under the more efficient transport rate structure being adopted; and (d) costs of not-fully-depreciated copper plant that was nevertheless being replaced by less expensive fiber optic facilities.⁷⁹ The Commission also cited assertions by parties to that proceeding that the TIC also recovered (e) general support facilities (GSF) and central office equipment (COE) maintenance expenses and GSF investment that were overallocated to the transport category;⁸⁰ and (f) additional costs that the Commission had not then identified.⁸¹

⁷⁷ We note that the Commission is presently considering whether to waive the PICC for toll-restricted Lifeline users and recover that revenue through Universal Service. Federal-State Joint Board on Universal Service, *et. al.*, CC Docket No. 96-45, *et. al.*, Second Further Notice of Proposed Rulemaking, FCC 97-317 (rel. Sept. 4, 1997). Multi-line businesses, however, are not eligible for Lifeline service.

⁷⁸ Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7038 (1992) ("*First Transport Order*").

⁷⁹ *First Transport Order* at 7046.

⁸⁰ *First Transport Order* at 7063-64.

⁸¹ *Id.* at 7066.

44. In reviewing the Commission's interim transport rate structure, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that the just and reasonable rates required by Sections 201 and 202 of the Communications Act⁸² must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking.⁸³ The D.C. Circuit, therefore, directed the Commission to develop a cost-based alternative to the TIC, or to provide a reasoned explanation for its departure from the principles of cost-based ratemaking.⁸⁴

45. In the *First Report and Order*, we reformed the TIC and set forth a plan that will eliminate per-minute TIC charges over the next few years. We initially identified TIC amounts that could be associated with particular network facilities and directed incumbent LECs to reallocate these TIC amounts to access rate elements more closely corresponding to those network facilities. These LECs will perform the required reallocations in access tariffs filed to become effective January 1, 1998, with some exceptions. For example, the portion of tandem-switching costs that the Commission initially allocated to the TIC will be reallocated to the tandem-switching rate element in three approximately equal steps concluding January 1, 2000. In addition, the costs of the incumbent LECs' tandem-switched transport transmission facilities that are not recovered from tandem-switched transport users under the unitary rate structure will be recovered through the TIC until July 1, 1998.

46. For price cap LECs, the "residual TIC," consisting of amounts that the LEC has not reallocated as described above, will be recovered through per-line PICCs, to the extent possible while remaining within the PICC caps. Residual TIC amounts that the price cap LEC cannot recover through PICCs will be recovered through a per-minute TIC on originating access, up to a cap, with any remainder recovered from per-minute charges assessed on terminating access.

47. In the *First Report and Order*, we recognized that the per-minute TIC, because it is assessed on all transport minutes carried on facilities that interconnect with the incumbent LEC's local switch, may give the incumbent LEC a competitive advantage in the transport market. We therefore provided a TIC exemption for switched minutes carried by competitive access providers (CAPs) that interconnect with the incumbent LEC switched access network at the end office, stating that, "if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some

⁸² 47 U.S.C. §§ 201-202.

⁸³ *Competitive Telecommunications Ass'n v. FCC*, 87 F.3d 522, 529 (D.C. Cir. 1996) ("*CompTel*").

⁸⁴ *Id.* at 533.

of the incumbent LEC's transport costs."⁸⁵ This TIC exemption is scheduled to take effect on January 1, 1998.⁸⁶

2. Petitions for Reconsideration and Petitions for Stay

a. AT&T and Teleport

48. On reconsideration, AT&T and Teleport request that we permit the per-minute residual TIC exemption for switched minutes carried by CAPs that interconnect with the incumbent LEC switched access network at the end office to take effect immediately, rather than on January 1, 1998.⁸⁷ According to Teleport, the Commission, having recognized that the imposition of TIC charges on CAP-transported minutes is "inconsistent with the pro-competitive goals of the 1996 Act," should not permit the practice to continue throughout the balance of calendar 1997.⁸⁸ In their comments, MCI, Hyperion, TRA, and Time Warner support this request.⁸⁹

49. Bell Atlantic and GTE oppose this request, arguing that the TIC exemption effectively disallows costs that the incumbent LECs will continue to incur. In support of this argument, Bell Atlantic and GTE contend that the incumbent LECs will be unable to impose TIC charges in areas where they face transport competitors. Because the Commission's rules permitting reallocation of facilities-related TIC amounts to other rate elements do not take effect until January 1, 1998, Bell Atlantic and GTE argue that it would be inappropriate to permit the TIC exemption to take effect at an earlier date.⁹⁰ Bell Atlantic maintains that the relief that AT&T and Teleport seek would produce an unjustified windfall to them and other

⁸⁵ *First Report and Order* at ¶ 240.

⁸⁶ *Access Charge Errata* at ¶ 4 (adding new para. 461 to the *First Report and Order*).

⁸⁷ Teleport Petition at 2-4; AT&T Petition at 10-12.

⁸⁸ Teleport Petition at 3-4.

⁸⁹ Time Warner Comments at 15-16; MCI Comments at 15; TRA Comments at 15; Hyperion Comments at 2-4.

⁹⁰ Bell Atlantic Comments at 7; GTE Comments at 13.

CAPs.⁹¹ Bell Atlantic and GTE propose that we instead revise the rule to prevent the TIC exemption from taking effect at any time.⁹²

b. RCN

50. RCN argues that the TIC exemption contained in the *First Report and Order* preserves the incumbent LECs' competitive advantage because it exempts CAP-transported minutes only from the "residual" TIC. In making this argument, RCN interprets the term "residual TIC" to include only non-facilities-related TIC amounts. Under RCN's interpretation, the "residual TIC" would not include facilities-related TIC amounts that will remain in the TIC until they are reallocated as late as January, 2000.⁹³ MCI indicates in its comments that it shares RCN's concern and requests that the Commission clarify that the TIC exemption for CAP-transported minutes applies to the per-minute TIC in its entirety.⁹⁴

c. U S West and NYNEX Petitions for Stay

51. NYNEX and U S West separately have filed petitions requesting that the Commission stay the effectiveness, pending appeal, of 47 C.F.R. § 69.155(c), the rule we adopted in the *First Report and Order* prohibiting local exchange carriers from assessing the per-minute residual TIC on traffic that uses the LEC's local switching services, but that does not use the LEC's local transport services.⁹⁵ NYNEX and U S West argue that such a stay is warranted because they are likely to prevail on the merits of their respective appeals and that the balance of equities favors a stay.⁹⁶ NYNEX and U S West further argue that the rule should be stayed in its entirety, to allow them to recover the entire per-minute TIC, without regard for the transport provider. In the alternative, however, NYNEX requests a partial stay to allow it to so recover the non-facilities-related portion of the TIC.

⁹¹ Bell Atlantic Comments at 7-8 (*citing* NYNEX Petition for Stay Pending Judicial Review, filed July 23, 1997 ("NYNEX Stay Petition")). Bell Atlantic and NYNEX completed their merger after NYNEX filed its Petition for Stay, but before the pleading cycle closed in this proceeding. *See* Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, Memorandum Opinion and Order, FCC 97-286 (rel. Aug. 14, 1997).

⁹² Bell Atlantic Comments at 7; GTE Comments at 13. *See also* USTA Comments at 7-8.

⁹³ RCN Petition at 8-9.

⁹⁴ MCI Comments at 13-14.

⁹⁵ NYNEX Petition for Stay; U S West Petition for Partial Stay Pending Judicial Review, filed August 14, 1997 ("U S West Petition for Stay").

⁹⁶ NYNEX Petition for Stay at 8-9; U S West Petition for Stay at 6.

52. Procedurally, NYNEX maintains that the Commission failed to offer an adequate opportunity for public comment on the residual TIC exemption, in that the Commission's *Access Charge Reform* NPRM failed to provide adequate notice of the TIC exemption⁹⁷ and that the Commission improperly relied on a CompTel/Teleport *ex parte* presentation made three weeks before the Order was adopted.⁹⁸ Several commenters counter that the Commission's NPRM in this proceeding gave adequate notice, and that the TIC exemption is a "logical outgrowth" of the NPRM.⁹⁹

53. Substantively, NYNEX argues that the Commission's decision to prohibit assessment of the residual TIC on minutes that use CAP transport networks is inconsistent with the Commission's findings that a large portion of the TIC is not related to any specific transport or other facilities.¹⁰⁰ In opposition, several parties argue that the TIC exemption is consistent with the Commission's finding that the TIC creates a competitive advantage for the incumbent LEC and with the Commission's reliance on a market-based approach to access reform.¹⁰¹ MCI argues that the Commission's inability to identify every dollar in the TIC is caused by NYNEX's and other incumbent LECs' own failures to explain their claim that these costs have been incurred and to justify their recovery.¹⁰² WorldCom asserts that, because the TIC can be traced to the incumbent LECs' transport-related costs, the Commission properly placed the burden on incumbent LECs to recover the TIC only from their own transport customers.¹⁰³ Teleport asserts that the TIC keeps incumbent LEC transport rates artificially low, not only to the extent that TIC amounts are related to specific transport facilities, but also to the extent that the TIC compels competitors to pay TIC charges, thereby allowing LECs to establish transport rates that do not fully recover their costs, whatever the source.¹⁰⁴

⁹⁷ NYNEX Petition for Stay at 18-19.

⁹⁸ NYNEX Petition for Stay, *Errata*, filed July 24, 1997, at 19.

⁹⁹ MCI Comments on NYNEX Petition for Stay at 4-5; Teleport Comments on NYNEX Petition for Stay at 11-14; WorldCom Comments on NYNEX Petition for Stay at 9; LBC Comments on NYNEX Petition for Stay at 2; Time Warner Comments on NYNEX Petition for Stay at 13-17.

¹⁰⁰ NYNEX Petition for Stay at 10-11.

¹⁰¹ LBC Comments on NYNEX Petition for Stay at 2; WorldCom Comments on NYNEX Petition for Stay at 3-4; Time Warner Comments at 8-9.

¹⁰² MCI Comments on NYNEX Petition for Stay at 7.

¹⁰³ WorldCom Comments on NYNEX Petition for Stay at 5-6.

¹⁰⁴ Teleport Comments on NYNEX Petition for Stay at 7-8.

54. NYNEX also argues that the Commission has failed to explain why it is reasonable for the LEC to recover both service-related and non-service-related TIC amounts from PICCs, but neither component from the per-minute residual TIC.¹⁰⁵ Several commenters counter that the Commission's application of cost-causation principles to conclude that CAPs should not be responsible for TIC charges for traffic that does not traverse LEC transport facilities is consistent with the Commission's other decisions reached in the *First Report and Order*.¹⁰⁶ Time Warner argues, however, that, if the recovery of residual TIC revenues through PICCs, but not through per-minute charges is inconsistent with the Commission's approach to the residual TIC, the solution should be to amend the rule to prevent the imposition of any residual TIC amounts, whether through PICCs or through per-minute charges, where a CAP provides the transport service.¹⁰⁷

55. NYNEX also argues that the use of price cap X-factor reductions to decrease the per-minute TIC will effectively reallocate the per-minute residual TIC to other rate elements as the per-minute TIC is reduced to the exclusion of all other rate elements. According to NYNEX, the residual TIC is completely excluded only to the extent that the X-factor targeting has not reallocated it to a permitted rate element. NYNEX argues that the Commission has not offered a justification for disallowing TIC recovery only during this transition period.¹⁰⁸ In opposition, Teleport argues that the Commission's stated justification - that per-minute charges assessed on all switched access minutes, including those of CAPs, adversely affects the development of competition -- is adequate.¹⁰⁹

56. NYNEX argues that the CAP TIC exemption is arbitrary in that it will have a disproportionately harsh effect on NYNEX, and that this non-uniform impact will hinder the development of "full and fair" competition.¹¹⁰ Similarly, U S West argues that, by making it difficult or impossible for it to collect the per-minute TIC, the TIC exemption is contrary to the Commission's decision not to disallow any portion of the current TIC.¹¹¹ Many commenters counter, however, that the mere allegation of a disproportionate impact is legally

¹⁰⁵ NYNEX Petition for Stay at 11-12; *See also* SWBT Comments on NYNEX Petition for Stay at 1-2.

¹⁰⁶ *E.g.*, Teleport Comments on NYNEX Petition for Stay at 9.

¹⁰⁷ Time Warner Comments on NYNEX Petition for Stay at 10.

¹⁰⁸ NYNEX Petition for Stay at 12.

¹⁰⁹ Teleport Comments on NYNEX Petition for Stay at 9.

¹¹⁰ NYNEX Petition for Stay at 13-14, 17.

¹¹¹ U S West Petition for Stay at 10.

irrelevant and does not justify the stay.¹¹² Several commenters state that, instead, the imposition of per-minute TIC charges on CAP transport minutes inhibited competition because (1) it made it easier for incumbent LECs to underprice their own transport services because transport revenues could be partially collected from a charge that would be subject to less competition; (2) it guaranteed the incumbent LEC a revenue stream not available to competitors; and (3) it required nascent competitive entrants to transfer revenues to their largest competitors.¹¹³ These commenters argue that the LECs' loss of their unfair competitive advantage, therefore, will promote, rather than hinder, competition.

57. NYNEX also argues that the TIC exemption contradicts the Commission's conclusion that access reform, in itself, should not produce overall rate reductions because the price cap LECs' per-minute TIC revenues are likely to be less than those calculated in the restructure. As a result, the price cap LECs will be unable to collect the full amount of revenues from per-minute residual TIC rates or PICCs that will be included in their January 1, 1998, tariff revisions.¹¹⁴ In opposition, several parties argue that NYNEX should not be guaranteed TIC revenues, but should be pressured by competition to reduce the disparity between its prices and those of its competitors.¹¹⁵ MCI cites the fact that NYNEX itself submitted a plan that would have eliminated 80 percent of the TIC¹¹⁶ and states that the Commission's decision to preclude imposition of TIC charges where such charges would impair the development of competition is consistent with the Commission's other actions designed to promote competition and eliminate the TIC as quickly as possible through price cap reductions and competitive pressures.¹¹⁷

58. NYNEX and U S West argue that an exemption for the service-related portion of the TIC is inconsistent with the Commission's continued reliance on subsidization of tandem-

¹¹² LBC Comments on NYNEX Petition for Stay at 2; WorldCom Comments on NYNEX Petition for Stay at 7-8; MCI Comments on NYNEX Petition for Stay at 9; Time Warner Comments on NYNEX Petition for Stay at 11.

¹¹³ WorldCom Comments on NYNEX Petition for Stay at 4; Teleport Comments on NYNEX Petition for Stay at 11.

¹¹⁴ NYNEX Petition for Stay at 14-15.

¹¹⁵ Teleport Comments on NYNEX Petition for Stay at 10; Time Warner Comments on NYNEX Petition for Stay at 11-12.

¹¹⁶ MCI Comments on NYNEX Petition for Stay at 2.

¹¹⁷ MCI Comments on NYNEX Petition for Stay at 8 ("If competition will prevent NYNEX from recovering inefficient costs, this is not an unexpected harm, it is precisely the goal the Commission adopted, and explained, for all incumbent LECs").

switching rates by direct-trunked transport customers until December 31, 1999.¹¹⁸ Several commenters counter that the TIC exemption is the only course consistent with the Commission's approach to fostering competition and with the *CompTel* remand's directive to adopt a cost-causative transport rate structure.¹¹⁹ Time Warner further argues that the appropriate remedy would be to allow incumbent LECs to petition the Commission for permission to make a faster transition to cost-based tandem-switching rates than the *First Report and Order* timetable permits.¹²⁰

59. U S West argues that, after January 1, 1998, the TIC will consist of implicit tandem switching and universal service support subsidies (including the higher costs of providing rural transport) and that the TIC exemption results in a collection system for this subsidy that is non-sustainable, discriminatory, and inequitable.¹²¹ MCI counters that, because both of these categories of costs are transport-related, the Commission correctly provided a TIC exemption for CAP-provided transport.¹²² MCI states that revenue-neutrality was not a Commission goal in this proceeding; rather, the introduction of competition can be expected to place downward pressure on prices.¹²³ Furthermore, several commenters argue that, because local transport, whether rural or otherwise, has never been a service eligible for universal service support, U S West's argument that the TIC contains implicit universal service subsidies is inaccurate.¹²⁴ Several commenters also contend that the Commission's established remedy, zone-based deaveraging of transport rates, provides U S West with an adequate opportunity to recover TIC amounts related to the higher costs of rural transport.¹²⁵

¹¹⁸ NYNEX Petition for Stay at 15-16; U S West Petition for Stay at 7.

¹¹⁹ WorldCom Comments on NYNEX Petition for Stay at 6-7; Teleport Comments on NYNEX Petition for Stay at 10; MCI Comments on NYNEX Petition for Stay at 8-9.

¹²⁰ Time Warner Comments on NYNEX Petition for Stay at 12-13.

¹²¹ U S West Petition for Stay at 7-10.

¹²² MCI Comments on U S West Petition for Stay at 4.

¹²³ *Id.* at 6.

¹²⁴ *Id.* at 9; LBC Comments on U S West Petition for Stay at 3; Teleport Comments on U S West Petition for Stay at 7.

¹²⁵ MCI Comments on U S West Petition for Stay at 10; Teleport Comments on U S West Petition for Stay at 8.

3. Discussion

60. We decline to modify the effective date of 47 C.F.R. § 69.155(c) as AT&T and Teleport request. Although some of the Commission's actions to reform the interstate access charge system took effect in access tariffs filed to become effective July 1, 1997, the majority of the Commission's rate structure changes take effect on January 1, 1998, or later. Because the TIC exemption at issue here is one part of our larger effort to reform the system of interstate access charges to preserve and promote competition, we believe that the rule should take effect on January 1, 1998, at the same time as many of our other rules relating to the transport rate structure. Incumbent LEC access tariffs filed to become effective on that date will reallocate many of the currently-identified facilities-related TIC amounts to other rate elements. In addition, on January 1, 1998, for the first time, the incumbent LECs will begin collecting remaining TIC amounts from PICCs assessed to IXCs on a flat-rate, per-line basis. Because a portion of the TIC, including some facilities-related TIC amounts, will be allocated to PICCs on January 1, 1998, we conclude that the extent of the exemption we adopt here will not be evident until these tariff revisions take effect. Thus, we conclude that the exemption should take effect only in concurrence with the implementation of the PICC.

61. We agree with RCN and MCI that we should clarify the extent of the TIC exemption described in the *First Report and Order*.¹²⁶ In addition, in response to concerns raised in NYNEX's and U S West's petitions for stay, we reconsider on our own motion¹²⁷ our adoption of the TIC exemption provided in the *First Report and Order*. Upon further consideration, we conclude that the TIC exemption provided in the *First Report and Order* could provide an unjustified windfall to competitive providers of local transport. Because the non-facilities-related portion of the residual TIC does not relate to the use of the incumbent LEC's interstate transport facilities, we need not exempt competitors from paying this portion of the TIC in order to prevent them from paying for the incumbent LEC's transport when that transport is not used. Therefore, incumbent LECs may continue, after January 1, 1998, to assess upon all local switching traffic that portion of their per-minute TIC charges that they do not anticipate will be reallocated in the future to facilities-based rate elements. This is the only portion of the per-minute TIC, however, that may be assessed upon traffic that uses the incumbent LEC's local switching services, but that does not use the incumbent LEC's local transport services. Under this rule, interexchange traffic that is switched at the incumbent LEC's local switch, but that is not transported on the incumbent LEC's local transport network, will be subject to the per-minute TIC, less the portion of the per-minute TIC

¹²⁶ *First Report and Order* at ¶ 240.

¹²⁷ 47 C.F.R. § 1.108. Under long-established Commission practice, the filing of a petition for reconsideration tolls the thirty day period our rules provide for *sua sponte* reconsideration. *E.g.*, *Central Fla. Enters., Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979), and *cert. denied* 460 U.S. 1084 (1983); *Radio Americana, Inc.* 44 F.C.C. 2506, 2510 (1961).